

FILED BY CLERK

JUN 17 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0094-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOEY ANTHONY VERDUZCO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20032196

Honorable Richard E. Gordon, Judge

REVIEW GRANTED; RELIEF DENIED

Nicole T. Farnum

Tempe
Attorney for Petitioner

ESPINOSA, Presiding Judge.

¶1 Petitioner Joey Verduzco seeks review of the trial court's summary dismissal of his second petition for post-conviction relief. After a jury trial, Verduzco was convicted of possession of cocaine for sale, possession of marijuana for sale, possession of drug paraphernalia, and possession of a deadly weapon during the commission of a felony drug offense. The trial court sentenced him to concurrent,

enhanced, presumptive prison terms, the longest of which was 15.75 years. We affirmed his convictions and sentences on appeal. *State v. Verduzco*, No. 2 CA-CR 2004-0274 (memorandum decision filed Jan. 6, 2006).

¶2 Verduzco appears to have filed his first notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in 2006. After an evidentiary hearing on Verduzco’s claim of ineffective assistance of trial counsel, the trial court denied relief. In this second post-conviction proceeding, Verduzco alleged ineffective assistance of his previous Rule 32 counsel. The trial court found Verduzco had failed to state a cognizable claim under Rule 32, denied relief, and dismissed the Rule 32 petition, citing *State v. Mata*, 185 Ariz. 319, 916 P.2d 1035 (1996), *State v. Krum*, 183 Ariz. 288, 903 P.2d 596 (1995), and *State v. Pruett*, 185 Ariz. 128, 912 P.2d 1357 (App. 1995).

¶3 In his petition for review, Verduzco argues he “had a viable claim for post-conviction relief that his lawyer mishandled to his detriment” and he “should have the ability to seek relief” pursuant to Rule 32. We will not disturb a trial court’s denial of post-conviction relief unless the court has abused its discretion. *Mata*, 185 Ariz. at 331, 916 P.2d at 1047. We find no such abuse here.

¶4 Although Verduzco relies on the reasoning of the court of appeals in *State v. Krum*, 182 Ariz. 108, 110-12, 893 P.2d 759, 761-63 (App. 1995), that decision has been vacated by our supreme court and has no precedential value. *Krum*, 183 Ariz. at 290, 903 P.2d at 598; *Wetherill v. Basham*, 197 Ariz. 198, n.1, 3 P.3d 1118, 1122 n.1 (App. 2000) (vacated cases have no precedential value). Verduzco’s attempt to limit the holdings in *Krum* and *Mata* to distinguishing facts found in those cases is similarly

unavailing. In *Krum*, our supreme court clearly stated, “when a defendant is entitled to a direct appeal with the assistance of counsel, there is no constitutional right to counsel or effective assistance in post-conviction proceedings” and therefore no “valid, substantive claim under Rule 32” for “ineffective assistance on a prior [post-conviction relief] petition.” 183 Ariz. at 292 n.5, 903 P.2d at 600 n.5. Similarly, in *Mata*, the court held a non-pleading defendant has no constitutional right to effective assistance of counsel in a post-conviction proceeding, notwithstanding a state created right to representation. 185 Ariz. at 336, 916 P.2d at 1052 (rejecting argument that defendant entitled to effective representation in first Rule 32 proceeding). *But cf. State v. Bennett*, 213 Ariz. 562, ¶ 16, 146 P.3d 63, 67 (2006) (defendant represented by same counsel on appeal and in first Rule 32 proceeding not precluded from claiming ineffective assistance of appellate counsel in second Rule 32 proceeding).

¶5 The trial court correctly dismissed Verduzco’s petition. *See* Ariz. R. Crim. P. 32.6(c). Although we grant review, we deny relief.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge